



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 1, 1996

Mr. Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR96-1058

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40563.

The Texas Natural Resource Conservation Commission (the "commission") received a request for information relating to a "previously open pit" located on the property of a named individual. The commission has two complaints that are responsive to the request, and you have submitted those complaints to this office for review. You contend that the names and telephone numbers of the complainants are excepted from disclosure under section 552.101 of the Government Code as information protected by the informer's privilege.

The informer's privilege is actually a governmental entity's privilege to withhold from disclosure the identity of those persons who report violations of law. The privilege recognizes the duty of citizens to report violations of law and, by preserving their anonymity, encourages them to perform that duty. *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege protects the identity of a person who reports a violation or possible violation of law to officials charged with the duty of enforcing that particular law. See Open Records Decision Nos. 515 (1988), 191 (1978). This office has held that the informer's privilege also applies when the informer reports violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 515 (1988) at 2 (quoting Open Records Decision No. 279 (1981) at 2). The privilege may protect the informer's identity and any portion of his statement that may tend to reveal his identity. Open Records Decision No. 515 (1988) at 2.

The complainants reported possible violations of administrative rules to the commission, and the commission has the authority to enforce those rules. One

complainant appears to be a private citizen. This complainant's name, telephone number, *and* address are excepted from disclosure under section 552.101 of the Government Code as information protected by the informer's privilege. The other complainant appears to be a public employee. The informer's privilege protects the identities of ordinary citizens who report possible violations of law to law enforcement officials, but not the identities of public employees who, in their official capacities, report possible violations of law because their job duties require them to do so. *See Roviario*, 353 U.S. at 59. If the public employee was acting within the scope of his or her employment when filing a complaint with the commission, then the informer's privilege does not protect the public employee's identity. *Cf. United States v. St. Regis Paper Co.*, 328 F.Supp. 660, 665 (W.D. Wis. 1971) (concluding that public officer may not claim informer's reward for service it is his or her official duty to perform). If, however, the public employee was acting as a private citizen, then the employee's name, telephone number, *and* address are excepted from disclosure under section 552.101 of the Government Code as information protected by the informer's privilege. We caution, however, that the city may not withhold a complainant's identity if the individual who would have cause to resent the communication knows the complainant's identity. *See Open Records Decision No. 202 (1978) at 2 (quoting Roviario v. United States*, 353 U.S. 53, 60 (1957)).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 40563

Enclosures: Submitted documents

cc: Ms. Janice Taylor
Mayor
City of Benjamin
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(w/o enclosures)